

# HOLLAND & KNIGHT LLP

2099 Pennsylvania Avenue, N.W.  
Suite 100  
Washington, D.C. 20006-6801

202-955-3000  
FAX 202-955-5564  
www.hklaw.com

ORIGINAL

RECEIVED

JUN - 1 2004

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Annapolis	San Francisco
Atlanta	Seattle
Bethesda	Tallahassee
Boston	Tampa
Bradenton	Washington, D.C.
Chicago *	West Palm Beach
Fort Lauderdale	
Jacksonville	International Offices:
Lakeland	Caracas**
Los Angeles	Helsinki
Miami	Mexico City
New York	Rio de Janeiro
Northern Virginia	São Paulo
Orlando	Tel Aviv**
Portland	Tokyo
Providence	
St. Petersburg	*Holland & Knight LLC
San Antonio	**Representative Office

June 1, 2004

DAVID A. O'CONNOR  
202-828-1889

Internet address:  
doconnor@hklaw.com

## VIA HAND DELIVERY

Marlene H. Dortch, Esq., Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554  
**Attention: Audio Division, Media Bureau**

Re: MB Docket No. 04-81  
Patagonia, Arizona – Channel 251A  
*Reply to Opposition to Petition for Rulemaking*

Dear Ms. Dortch:

Transmitted herewith, on behalf of Calvary Chapel of Tucson, Inc. ("CCT"), are an original and four (4) copies of its Reply to the "Opposition to Petition for Rulemaking" filed in the above-captioned proceeding by Desert West Air Ranchers Corporation.

An extra copy of the filing is enclosed. Please date-stamp the extra copy and return it to the courier.

Should you have any questions, please contact the undersigned.

Respectfully submitted,

HOLLAND & KNIGHT LLP



David A. O'Connor  
Counsel for Calvary Chapel of Tucson, Inc.

Enclosure

No. of Copies rec'd  
List A B C D E

014

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

ORIGINAL

RECEIVED

JUN - 1 2004

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

)  
)  
Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations  
(Patagonia, Arizona)

) MB Docket No. 04-81  
) RM-10876  
)  
)

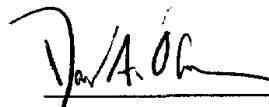
To: Chief, Media Bureau

**REPLY TO OPPOSITION TO PETITION**  
**FOR RULEMAKING**

Calvary Chapel of Tucson, Inc. ("CCT"), by its counsel, hereby replies to the May 17, 2004 "Opposition to Petition for Rulemaking" ("Opposition") filed by Desert West Air Ranchers Corporation ("Desert") in this proceeding. For the reasons set forth in the attached Technical Statement, Desert's Opposition should be dismissed as meritless. The Technical Statement confirms that CCT has fully complied with the Commission's reservation showing requirements. Accordingly, CCT reiterates its contention that Channel 251A, Patagonia, Arizona may be reserved for noncommercial use.

Respectfully submitted,

CALVARY CHAPEL OF TUCSON, INC.



\_\_\_\_\_  
David A. O'Connor  
Holland & Knight LLP  
2099 Pennsylvania Ave., NW, Suite 100  
Washington, DC 20006  
Tel: 202-828-1889  
Fax: 202-955-5564  
E-mail: david.oconnor@hklaw.com  
Its Attorney

June 1, 2004

**ENGINEERING TECHNICAL STATEMENT PREPARED BY WILLIAM T. GODFREY OF THE FIRM KESSLER AND GEHMAN ASSOCIATES, INC. TELECOMMUNICATIONS CONSULTING ENGINEERS IN RESPONSE TO DESERT WEST AIR RANCHERS CORPORATION'S OPPOSITION TO PETITION FOR RULEMAKING WITH RESPECT TO THE PUBLIC NOTICE OPENED BY THE MEDIA BUREAU TO PERMIT NONCOMMERCIAL EDUCATIONAL RESERVATION SHOWINGS FOR CERTAIN VACANT FM ALLOTMENTS.**

The firm Kessler and Gehman Associates, Inc. has been retained by Calvary Chapel of Tucson ("Calvary") to prepare engineering studies to support its response to the Desert West Air Ranchers Corporation's ("Desert") Opposition to Petition for Rulemaking with respect to the Public Notice opened by the Media Bureau to permit noncommercial educational reservation showings for certain vacant FM allotments; specifically the vacant commercial FM Channel 251A Patagonia, AZ allotment.

**Background**

As stated in the Petition for Rulemaking to reserve the commercial FM Channel 251A Patagonia, AZ allocation for non-commercial use, Calvary stands by its original determination that it would indeed provide a first and/or second non-commercial educational ("NCE") radio service to at least ten percent of the population within the 60.0 dBuV/m contour of the proposed FM Channel 251A Patagonia, AZ station and that a new NCE-FM station on any reserved channel between 201 and 220 would be considered "technically precluded" based on the fact that no rule-compliant facility could be authorized on any reserved band channel at, or in near proximity to, the allotted Patagonia, AZ transmitter site.

Desert indicated in its opposition that Calvary erred by excluding the KUAZ-AM radio station from its service analysis and stated that the reservation of Channel 251A at Patagonia would provide a first or second NCE radio service to only six percent of the population to be served by that station. Desert also alleged that "Calvary Chapel did not consider the noncommercial FM service provided by KUAT-FM, Tucson, Arizona, and KNOG(FM), Nogales, Arizona." A lengthy argument was also included in the Opposition in an attempt to prove that AM stations should not be ignored when calculating the first and/or second service test.

Finally, Desert alleges that Calvary failed to demonstrate by its preclusion study that there is no reserved-band channel available for use at Patagonia because the relevant 79.5 dBu interfering contour for a Channel 218A minimum facility would encompass just 1,028 persons, and the relevant 83 dBu interfering contour for a Channel 219A minimum facility would encompass just 964 persons.

### **Discussion**

The Commission should reject Desert's assertion that AM stations must be considered in reservation showings. As stated in the Reexamination of the Comparative Standard for Noncommercial Educational Applicants (MM Docket No. 95-31), the Commission has not reserved any particular frequencies for exclusive use in AM service. Furthermore, an AM licensee may simply apply to change from educational to commercial via a modification of license application at any time with no exhibits required. In direct contrast, an FM licensee operating on Channels 201 to 220 cannot change from educational to commercial.<sup>1</sup> The KUAZ-AM facility mentioned in Desert's Opposition could easily change from noncommercial to commercial status at any time. The FCC's intent with respect to first and/or second NCE radio service was clearly focused on NCE-FM (not AM); therefore, Desert's claim that the KUAZ-AM facility was ignored in the first and/or second service engineering study is meritless. Even if the Commission did take NCE-AM stations into consideration, Desert's claim would be flawed based on the fact that KUAZ-AM is licensed to operate as a "daytime only" AM facility (see Exhibit A). It was clearly not the Commission's intent to restrict NCE-FM reservations due to a part-time AM presence in the area.

For the Commission's convenience, Exhibit 1 of the November 20, 2003 Petition for Rulemaking filed by Calvary has been enclosed. Referring to Exhibit 1, it can be seen that the first and/or second service engineering study did in fact take the KUAT-FM Tucson, AZ and KNOG-FM Nogales, AZ facilities into consideration despite Desert's claim that Calvary undermined the showing by failing to recognize those two stations. Desert's other arguments are equally meritless.

A revised first and/or second study verified that the total population within the maximum class facility's 1 mV/m service contour for Patagonia, AZ is predicted to be 37,730 persons and the total population within the proposed Patagonia, AZ maximum facility contour that would receive a first

---

<sup>1</sup> §73.1690(c)(9)

and/or second NCE-FM service is predicted to be 37,730 persons (100%). Again, this is greater than 10% of the population within the proposed station's service area and is greater than the minimum required population of 2,000 persons.

Desert maintains that Calvary failed to demonstrate by its preclusion study that there is no reserve-band channel available for use at Patagonia. Desert claims that the 79.5 dBu interfering contour is the relevant contour for Channel 218A and that the 83.0 dBu interfering contour is the relevant contour for Channel 219A which encompass 1,028 persons and 964 persons respectively. Desert is mistaken when it alleges that the relevant interfering contour is the interfering contour associated with the TV Channel 6 47.0 dBuV/m Grade B contour. In actuality, the relevant interfering contour for Channel 218A is the larger 77.2 dBuV/m contour and the relevant interfering contour for Channel 219A is the larger 81.5 dBu contour.<sup>2</sup> Therefore, Desert's population counts for both channels are defective and should be ignored.

### **Conclusion**

It has been demonstrated, for a second time, that the proposed Patagonia, AZ facility would meet the first and/or second service requirements and that a new NCE-FM station on any reserved channel between 201 and 220 would be considered "technically precluded" based on the fact that no rule-compliant facility could be authorized on any reserved band channel at, or in near proximity to, the allotted Patagonia, AZ transmitter site. Desert's analysis of the Calvary Petition for Rulemaking is flawed, including percentage calculations, population counts and relevant interfering contours. Therefore, Desert's Opposition should be dismissed and the Commission should reserve Channel 251A for NCE-FM use.

### **Certification**

This technical statement was prepared by William T. Godfrey, Telecommunications Consultant with Kessler and Gehman Associates, Inc. having offices in Gainesville, Florida and has been working in the field of radio and television broadcast consulting since 1998. He graduated from the University of North Florida with a Bachelor of Arts degree in Criminal Justice and a minor in Mathematics in 1993.

---

<sup>2</sup> Calvary notes that FM-to-FM interference would also exist for Channels 218 and 219.



United States of America  
**FEDERAL COMMUNICATIONS COMMISSION**  
**AM BROADCAST STATION LICENSE**

Authorizing Official:

Official Mailing Address:

ARIZONA BOARD OF REGENTS  
MODERN LANG BLDG, U OF A  
TUCSON AZ 85721

Brian J. Butler  
Supervisory Engineer  
Audio Division  
Media Bureau

Facility Id: 2723

Call Sign: KUAZ

License File Number: BZ-20000425AAX

Grant Date: July 25, 2000

This license expires 3:00 a.m.  
local time, October 01, 2005.

DIRECT MEASUREMENT OF POWER

Subject to the provisions of the Communications Act of 1934, subsequent acts and treaties, and all regulations heretofore or hereafter made by this Commission, and further subject to the conditions set forth in this license, the licensee is hereby authorized to use and operate the radio transmitting apparatus herein described.

This license is issued on the licensee's representation that the statements contained in licensee's application are true and that the undertakings therein contained so far as they are consistent herewith, will be carried out in good faith. The licensee shall, during the term of this license, render such broadcasting service as will serve the public interest, convenience, or necessity to the full extent of the privileges herein conferred.

This license shall not vest in the licensee any right to operate the station nor any right in the use of the frequency designated in the license beyond the term hereof, nor in any other manner than authorized herein. Neither the license nor the right granted hereunder shall be assigned or otherwise transferred in violation of the Communications Act of 1934. This license is subject to the right of use or control by the Government of the United States conferred by Section 606 of the Communications Act of 1934.

Hours of Operation: Daytime

Average hours of sunrise and sunset:  
Local Standard Time (Non-Advanced)

Jan.	7:30 AM	5:45 PM	Jul.	5:30 AM	7:30 PM
Feb.	7:15 AM	6:15 PM	Aug.	5:45 AM	7:15 PM
Mar.	6:30 AM	6:30 PM	Sep.	6:00 AM	6:30 PM
Apr.	6:00 AM	7:00 PM	Oct.	6:30 AM	5:45 PM
May	5:30 AM	7:15 PM	Nov.	7:00 AM	5:30 PM
Jun.	5:15 AM	7:30 PM	Dec.	7:15 AM	5:15 PM

EXHIBIT A

Callsign: KUAZ

License No.: BZ-20000425AAX

Name of Licensee: ARIZONA BOARD OF REGENTS

Station Location: TUCSON, AZ

Frequency (kHz): 1550

Station Class: D

Antenna Coordinates:

Day

Latitude: N 32 Deg 22 Min 21 Sec

Longitude: W 111 Deg 05 Min 52 Sec

Transmitter(s): Type Accepted. See Sections 73.1660, 73.1665 and 73.1670 of the Commission's Rules.

Nominal Power (kW): Day: 50.0

Antenna Input Power (kW): Day: 50.0

Antenna Mode: Day: ND

(DA=Directional Antenna, ND=Non-directional Antenna; CH=Critical Hours)

Current (amperes): Day: 40.3

Resistance (ohms): Day: 30.8

Non-Directional Antenna: Day

Radiator Height: 115.8 meters; 215.6 deg

Theoretical Efficiency: 437.74 mV/m/kw at 1km

Antenna Registration Number(s):

Day:

Tower No.	ASRN	Overall Height (m)
1	1003921	

Special operating conditions or restrictions:

- 1 The permittee/licensee in coordination with other users of the site must reduce power or cease operation as necessary to protect persons having access to the site, tower or antenna from radiofrequency electromagnetic fields in excess of FCC guidelines.

\*\*\* END OF AUTHORIZATION \*\*\*

EXHIBIT A




**Patagonia, AZ Channel 251 Class A**

201C2 Mammoth	AZ 960229	32.415	110.7156	0.16	1083	APP	95.8	1.695518	52
201C Douglas	AZ ALLO	31.34333	109.5525	100	600	VAC	115.76	101.2385	92
202A Tucson	AZ 960712	31.90528	110.4522	0.25	165	APP	48.1	35.13261	28
203B Arizpe	SO ALLO	30.32972	110.1608	50	150		146.57	157.5205	52
203A Tucson	AZ 960517	32.00306	110.7969	3	125	APP	50.31	354.5188	28
203A Tucson	AZ 960517	32.00306	110.7969	1.5	125	APP	50.31	354.5188	28
204B Sasabe	SO ALLO	31.46667	111.5472	50	150		76.69	263.1408	52
205A Douglas	AZ ALLO	31.34333	109.5525	6	100	VAC	115.76	101.2385	28
205A Tucson	AZ 951208	32.61555	110.6442	1.8	8	APP	118.39	4.600945	28
206B Santa Ana	SO ALLO	30.55472	111.1542	50	150		117.21	199.4459	52
206A Tucson	AZ KUAFM	32.3725	111.0978	3	3	LIC	96.94	340.1096	28
206A Tucson	AZ KUAFM	32.31472	111.0058	1.6	187	APP	77.56	341.6597	28
208C Nogales	SO ALLO	31.33111	110.9436	100	600		30.83	217.5047	92
211A Bisbee	AZ KRMB	31.48111	109.9583	0.047	685	LIC	75.21	95.77026	28
211A Douglas	AZ ALLO	31.34333	109.5525	6	100	VAC	115.76	101.2385	28
211B Benjamin Hill	SO XHHILF	30.23333	111.0333	2.04	209	OPE	148.75	190.6759	52
213C Tucson	AZ KUATFM	32.41528	110.715	12.5	1091	LIC	95.83	1.726122	92
214B1 Magdalena De Kino	SO XHIMSF	30.62917	111.0617	7	0	OPE	106.63	196.4269	39
214B1 Magdalena De Kino	SO ALLO	30.62917	111.0617	25	100		106.63	196.4269	39
214A Imuris	SO ALLO	30.77889	110.8683	3	100		86.48	187.7589	28
215A Bisbee	AZ KWRB	31.48111	109.9583	0.058	676	LIC	75.21	95.77026	28
215C2 Sierra Vista	AZ KWRB.A	31.48278	109.9581	0.99	638	APP	75.21	95.62739	52
215B San Francisco	SO ALLO	31.59167	112.325	50	150		149.95	272.128	52
216A Nogales	AZ KNOG	31.35917	110.8983	3	49	LIC	25.77	214.128	28
217C2 Tucson	AZ KXCI	32.415	110.7156	0.34	1110	LIC	95.8	1.695518	52
218A Cananea	SO ALLO	30.96194	110.3169	3	100		77.09	148.0069	28
219A Douglas	AZ KRMC	31.34778	109.4783	3	72	LIC	122.58	100.3329	28
220C1 Sells	AZ KOHN.C	32.13306	112.1586	10	505	CP	148.47	296.229	72
221C2 Green Valley	AZ KFMA	32.00306	110.7969	50	150	LIC	50.31	354.5188	52
222A Bisbee	AZ KWCD	31.48111	109.9583	0.05	676	LIC	75.21	95.77026	28
223A Santa Cruz	SO ALLO	31.23278	110.6014	3	100		37.92	158.8057	28
223C3 Willcox	AZ ALLO	32.27278	109.8039	25	100	VAC	119.73	47.69489	39
225C Tucson	AZ KOYT	32.24889	111.1164	93	621	LIC	84.91	335.8213	92
227C Cananea	SO ALLO	31.05583	110.3811	100	600		65.01	147.7415	92
227C Cananea	SO XHSCAF	31.05583	110.3811	15.2	1009	OPE	65.01	147.7415	92
229C Tucson	AZ KRQQ	32.24889	111.1158	94	619	LIC	84.89	335.853	92
231C1 Safford	AZ KXKQ	32.65028	109.8481	1	1307	LIC	148.42	34.44894	72
231C1 Safford	AZ RDEL	32.65028	109.8481	100	299	DEL	148.42	34.44894	72
232A Huachuca City	AZ ALLO	31.54167	110.3889	6	100	VAC	33.91	91.73745	28
232A Sasabe	SO ALLO	31.40361	111.5306	3	100		76.33	257.7531	28

## CERTIFICATE OF SERVICE

I, Laura Ledet, an employee of Holland & Knight LLP, hereby certify that on June 1, 2004, a copy of the foregoing "Reply to Opposition to Petition for Rulemaking" was served, via first class mail, to the following:

Susan A. Marshall, Esq.  
Lee G. Petro, Esq.  
Fletcher, Heald & Hildreth, P.L.C.  
11<sup>th</sup> Floor, 1300 North 17<sup>th</sup> Street  
Arlington, VA 22209-3801  
*Counsel for Desert West Air Ranchers Corporation*

  
Laura Ledet

# 1982596\_v1